



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII

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September 16, 2022

Frank Schofield, Superintendent
Logan City School District
101 W. Center St.
Logan, UT 84321

By email only to: XXXX@XXXX

Re: OCR Case No. 08-22-1297
Logan City School District

Dear Superintendent Schofield:

This letter is to advise you of the outcome of the complaint that the United States Department of Education (Department), Office for Civil Rights (OCR) received on April 1, 2022 against the Logan City School District (District). The Complainant, an attorney, alleges that the District is discriminating based on race/color/national origin and disability. The Complainant alleges specifically that:

1. The District discriminates against students based on disability and national original through its policy of not referring and/or evaluating English learners for special education until they have had three years of instruction in the United States;
2. The District, and specifically Logan High School, discriminated against the Complainant's client, the Parent, on the basis of her race/color/national origin (Somali) by failing to provide her with meaningful communication about the School's programs, services, and activities, including but not limited to communication about special education services for and discipline of the Student, in a language that she could understand;
3. The District, and specifically XXX School, discriminated against the Student based on his race/color/national origin (XXX) and disability (XXX) by failing to provide him with educational services, including but not limited to special education and language assistance services, during his long-term suspension from school from XXX until XXX; and
4. The District, and specifically XXX discriminated against the Student on the basis of disability by making a placement decision at a Manifestation Determination Review

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

(MDR) meeting on XXX, without a group of persons knowledgeable about the Student, the meaning of the evaluation data, and the placement options.

OCR is responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. OCR is also responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations (C.F.R.) Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department, and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and a public entity, the District is subject to all these laws and regulations.

On June 15, 2022, we notified the District that OCR was opening an investigation of the above allegations. We also sent the District a data request. The District expressed interest in voluntarily resolving any concerns identified by OCR during an August 28, 2022 conversation. During a September 7, 2022 conversation, the District confirmed its interest in voluntarily resolving the complaint. Pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), a complaint may be resolved when, before the conclusion of an investigation, a recipient expresses an interest in resolving the complaint and when OCR has determined that identified concerns can be addressed through a voluntary resolution agreement. OCR has determined that the concerns identified during the course of the investigation can be addressed through a voluntary resolution agreement and that a voluntary resolution agreement is also an efficient way to resolve this complaint. The following is a discussion of the relevant legal standards and information obtained by OCR during the investigation that informed the development of the voluntary resolution agreement (Agreement) in this case.

Background Information

OCR's investigation included interviewing the Parent; communications with the Complainant and with the family advocate; reviewing documents pertinent to the complaint allegations, including the District's special education, school discipline, and English Learner (EL) policies and procedures, the Student's complete file, communications with the Parent, translator lists, and data on ELs and students with disabilities in the District; and interviewing four District witnesses, including the District's Director of Special Education, an Assistant Principal, a Special Education Case Manager, and an English Language Development Teacher.

Following review of the submitted documentation and the interviews, OCR learned the following:

The District serves approximately 5,700 students. According to data from the 2017 Civil Rights Data Collection, approximately 12.9% of the District's students are English Learner (EL)

students. The District’s families speak a number of languages other than English, including Spanish, Somali, Marshallese, Karen, and Tigrinya.

The Parent, the Student, and the Student’s siblings are from XXX, and their first language is XXX, XXX. The Parent does not read or write in XXX. The Student did not have any formal education before entering the United States. The Student first enrolled in a United States school on or around XXX. The Student entered the District on or around XXX as a XXX grade student at XXX School, where he received English language development instruction. The Student continues to receive English language development instruction. The Student had a long history of discipline in XXX school and according to the Parent, struggled in school academically. The Parent told OCR that she asked the Student’s teachers for “special classes” for the Student so that he could make more academic progress but no one listened to her.

The Student was first referred for a special education evaluation in XXX, when he had been in the United States for exactly three years. The Student was evaluated in English on XXX and XXX. On XXX, the Student was found eligible for an Individualized Education Program (IEP) for XXX.

The Student was a XXX grade student at XXX School (the School) at the start of the 2021-2022 school year. On XXX, the Student was suspended for fighting; the Student was sent home for the last two periods of XXX and suspended for the next four school days, through XXX. The Student was suspended on XXX for disrespecting a teacher. The Student was suspended again from September 29, 2021 through January 2, 2022 for theft of a student’s bicycle and “inappropriate behavior”.

The District scheduled a manifestation determination review (MDR) hearing for October 5, 2021 and a due process disciplinary hearing for October 6, 2021 to discuss long-term suspension of the Student. The disciplinary hearing was scheduled before a determination was made at the October 5, 2021 MDR. The District was aware when it scheduled the MDR that the two individuals who typically interpret for the Parent, the Parent’s daughter and a community member/family friend, were unable to attend the MDR on October 5, 2021.

The October 5, 2021 MDR took place without the Parent, the Student, or an interpreter, although the Parent and Student had indicated that they wanted to participate in the meeting and attempted to attend the meeting. The MDR also did not include all the Student’s general education teachers. Several District witnesses told OCR that the District proceeded with the MDR although the Parent and Student were not present because the disciplinary hearing was scheduled for the next day.

The members of the Student’s IEP Team who assembled on October 5, 2021 determined that the Student’s conduct was not a manifestation of the Student’s disability but did not document what information the Team considered when making that determination. One IEP Team member told OCR that the Team did not discuss whether the Student’s IEP was being implemented and presumed that it was. There are no notes regarding the October 5, 2021 MDR.

The Parent was provided with the results of the MDR for the first time at the disciplinary hearing on October 6, 2021. The information was presented to her in English with the Parent's daughter serving as an interpreter. The Parent was not given a list of the alleged offenses at the October 6, 2021 disciplinary hearing and states that she did not understand the allegations.

The District mailed a decision in English to the Parent stating that the District had decided to suspend the Student through the end of the 2021-2022 school year, which was 151 school days. The October 8, 2021 decision letter additionally states that during the suspension, the Student would have access to all his courses through the School's online curriculum, access to online tutoring through tutor.com, and up to two hours of special education services per week. The Student's Case Manager/special education teacher told OCR that she was not involved in the decision of how many hours of services to provide to the Student. The Parent was instructed to contact the special education department to arrange for services. The letter also encouraged the Parent to contact a non-profit organization to explore language development options for the Student.

On October 14, 2021, the Parent's family advocate wrote an appeal letter complaining, among other things, that the Parent was unable to participate meaningfully in the disciplinary hearing because the District did not provide her with a qualified interpreter and that the Student's academic progress was at a "stand-still" since he had received no support services beyond online access to his courses since his suspension. On October 19, 2021, a general education teacher was identified to provide support to the Student during his suspension. On or around October 22, 2021, the Parent was given an opportunity through an interpreter to add her position regarding the suspension to the disciplinary record; the District did not conduct a new disciplinary hearing.

In mid-November 2021, the general education teacher assigned to provide services to the Student reached out for the first time to the Parent through an interpreter to try to schedule tutoring for the Student. In a November 16, 2021 letter, the District agreed to stay the long-term suspension of the Student and allow him to return to school once a behavior management plan could be developed.

The Student was in a juvenile detention facility from October 25, 2021 to November 3, 2021 and November 19, 2021 through December 2, 2021. The Student returned to School on January 3, 2022. During the three-month period he was suspended, the Student received no educational services from the District. According to the family advocate, the online curriculum was hard for the Student to navigate given his limited English proficiency.

The Student is not currently enrolled at the School because he is in a residential treatment facility. The Parent plans to re-enroll the Student at the School after the Student's release from the facility.

Allegation 1 (Requiring Three Years of United States Instruction for EL Students)

Legal Standard

Title VI provides that recipients must provide equal educational opportunity to EL students. Recipients must ensure that EL students with disabilities under the Individuals with Disabilities Education Act (IDEA) or Section 504 are evaluated in a timely and appropriate manner for special education and disability-related services and that their language needs are considered in evaluations and delivery of services.

Legal Analysis

The Student had a long history of discipline in XXX school but was not referred for a special education evaluation until XXX, when he had been in the United States for three years. The District's written policies and procedures do not require that EL students have three years of instruction in the United States before being referred or evaluated for special education services. The District told OCR that there are students who have been qualified for special education with less than three years in the United States, but the District could not provide any names of students when asked. In addition, review of the documentation submitted by the District included a reference to needing three years of instruction in the United States before identifying a student with a disability and references to requiring at least two interventions before referring or evaluating any student for special education services, including non-EL students. Interviews also indicated the possibility of confusion among District staff regarding whether the District has an informal policy that EL students must have three years of instruction in the United States and/or a certain number of scores on the yearly ACCESS test to provide the District with sufficient data to determine whether an EL student needs a special education evaluation.

Allegation 2 (Limited English Proficient Parent/Guardian Communication)

Legal Standard

The Title VI implementing regulations, at 34 C.F.R. §§ 100.3(a) and (b), provide that a recipient of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color or national origin, exclude persons from participation in its programs, deny them any service or benefits of its programs, or provide any service or benefit which is different or provided in a different manner from that provided to others.

On May 25, 1970, pursuant to its authority under Title VI, the Department issued a memorandum entitled *Identification of Discrimination and Denial of Services on the Basis of National Origin*.¹ The memorandum clarified OCR policy under Title VI on issues concerning the responsibility of recipients to provide equal educational opportunity to limited English proficient (LEP) national origin minority students and their parents/guardians (parents).

¹ 35 Fed. Reg. 11,595.

The May 25, 1970 memorandum states that recipients must adequately notify national origin minority group parents of information that is called to the attention of other parents, and that such notice may have to be provided in a language other than English in order to be adequate. A recipient's obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any programs, service, or activity of a school district that is called to the attention of non-LEP parents requires a recipient to provide LEP parents with oral interpretation and/or written translation of important school-related information and documents in the parents' primary language where necessary to ensure that the parents can meaningfully participate in their child's education.² Further, recipients must develop and implement a process for determining whether parents are LEP and identify their language needs. The process should be designed to identify all LEP parents, including parents of children who are proficient in English.

Recipients must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for staff merely to be bilingual. Recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or concepts to be used in the communication at issue and they are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, interpreters should be able to demonstrate proficiency in and ability to communicate information accurately in both English and in the other language and be knowledgeable of any particularized vocabulary and phraseology used by the LEP person. It is not sufficient for recipients to rely on students, siblings, or friends to translate or interpret for parents.

Legal Analysis

The District states that the School identifies LEP parents using the Home Language Survey (HLS). The District's HLS specifically asks, "In what language do you (the parent/guardian) prefer to receive future communication from the school?"

The District's data response acknowledged, and the documentation provided by the District and interviews confirmed, that the School often relied on the Student's siblings to interpret for the Parent, including at special education meetings and disciplinary hearings, in accordance with its policy of asking family members or friends to translate before contacting an approved interpreter on the District's list. The District's data response acknowledged, and interviews confirmed, that an interpreter was not provided for the Parent on at least two occasions (i.e., the October 5, 2021 manifestation determination review meeting and a police interrogation of the Student outside of an April 2022 IEP meeting) and the Student's sister interpreted for the Parent at the disciplinary hearing on October 6, 2021.

² On January 7, 2015, OCR and the United States Department of Justice issued a joint *Dear Colleague Letter* entitled "English Learner Students and Limited English Proficient Parents," which discusses school districts' obligation to ensure meaningful communication with LEP parents in a language they can understand of information about any program, service or activity that is called to the attention of non-LEP parents. The *Dear Colleague Letter* may be found at: <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.

In addition, one of the School’s Assistant Principals told OCR that the School has no policy for translating written documents into a language other than Spanish. A Special Education Case Manager told OCR that in her fifteen years in her position at the School, she is not aware of any instance in which an IEP or special education eligibility documentation was translated into a language other than Spanish.

Allegation 3 (Educational Services During Suspension)

Legal Standard

Section 504, at 34 C.F.R. § 104.33, states a recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified person with a disability who is in the recipient’s jurisdiction, regardless of the nature or severity of the person’s disability. Section 104.33(b)(1) states the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of persons with disabilities as adequately as the needs of persons without disabilities are met and (ii) are based upon adherence to procedures that satisfy the requirements of 104.34, 104.35, and 104.36. Further, per Section 104.33(b)(2), implementation of an IEP developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

The Title II implementing regulation, at 28 C.F.R. § 35.130, states no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Under Section 504, where a school provides educational instruction and services to students without disabilities during the pendency of disciplinary proceedings or during the period of a disciplinary removal, it also must provide educational instruction and services to similarly situated students with disabilities.

Legal Analysis

The District’s Safe Schools policy states that when a student is expelled or suspended for more than 10 days, it is the responsibility of the parent to undertake an alternative education plan which will ensure that the student’s education continues during the period of suspension or expulsion. However, District witnesses told OCR that when students are suspended, the District provides all students access to their courses (including EL courses) through Edgenuity, an online curriculum, and access to third-party online tutoring. Students with disabilities are additionally provided off-site homebound services from a teacher. The District generally provides two hours of homebound services per week to students with disabilities who have been suspended.

The Student was offered two hours of homebound services per week from a general education teacher, which was not an individualized determination made by the Student’s IEP team. The Student did not receive any educational services through Edgenuity or a homebound teacher during the time he was suspended.

The District claims that the Student did not receive homebound services because the Parent delayed in calling to schedule the services and the Student was in juvenile detention during much of the period of suspension. However, the letter instructing the Parent to call the special education department was in English. In addition, a teacher was not assigned to provide the services until almost three weeks after the Student was suspended, and she did not contact the Parent until more than six weeks after he was suspended. The District did not provide OCR with a reason why the Student received no educational services in December 2021, when he was not in juvenile detention.

Allegation 4 (Manifestation Determination Review)

Legal Standard

Section 504, at 34 C.F.R. § 104.35(a), states a recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of a disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement.

The exclusion of a student with a disability from his or her program for more than ten consecutive days, or for a total of ten or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student’s disability. If so, the district may not take the disciplinary action and should determine whether the student’s current placement is appropriate. If the misconduct is found not to be a manifestation of the student’s disability, the disciplinary action may be administered in the same manner as for non-disabled students.

34 C.F.R. § 104.35(c) requires school districts to ensure that placement decisions are made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. 34 C.F.R. § 104.35(c) further requires that placement decisions be based on information from a variety of sources that is carefully considered and documented. When a placement decision is made through the manifestation determination process, the IEP Team must review all relevant information in the student’s file, including the Student’s IEP to determine whether the Student’s conduct was caused by or was the manifestation of their disability.

The Title II implementing regulation, at 28 C.F.R. § 35.130, states no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the

benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity.

Legal Analysis

The District's data response acknowledged and interviews confirmed that the Student's October 5, 2021 MDR was held without the Parent, the Student, or an interpreter, although the Parent and Student had indicated that they wanted to participate in the meeting, and the Parent and the Student also attempted to attend the meeting. The October 5, 2021 MDR did not include all of the Student's general education teachers. The members of the Student's IEP Team who assembled on October 5, 2021 did not document what information the Team considered when making the determination that the Student's September 29, 2021 behavior was not a manifestation of his disability. In addition, the District did not provide the Parent with the findings of the MDR before the disciplinary hearing.

Resolution

Based on the information learned through the data response and interviews, OCR noted concerns that District staff may be under the impression that the District has an informal policy of requiring that EL students must be in the United States for three years before proceeding with special education referrals for EL students, that the District did not ensure meaningful communication with the Parent in a language she can understand regarding the October 5, 2021 manifestation determination review meeting and October 6, 2021 disciplinary hearing, that the District did not properly conduct the Student's manifestation determination review meeting on October 5, 2021, and that the Student did not receive educational services during the time he was suspended from September 29, 2021 until January 3, 2022.

As previously noted, the District expressed interest in voluntarily resolving any concerns identified by OCR during an August 28, 2022 conversation, and, during a September 7, 2022 meeting, the District confirmed its willingness to voluntarily resolve the complaint.

On September 13, 2022, we sent the District a proposed Resolution Agreement (Agreement). The District sent OCR the enclosed signed Agreement on September 16, 2022. When fully implemented, the Agreement will resolve the allegations raised in this complaint. The provisions of the Agreement are aligned with the allegations and issues raised by the Complainant and the information that was obtained during OCR's investigation, and the provisions of the Agreement are consistent with the applicable statutes and regulations. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the statutes and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement. When the monitoring phase of the case is complete, OCR will close case number 08-22-1297 and will send a letter to the Complainant and to the District stating that the case is closed.

This letter sets forth OCR's determination in an individual case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. Complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

Please note the Complainant may have the right to file a private suit in Federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, we will seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We thank the District for being willing to voluntarily address the allegations and concerns raised by the complaint. We appreciate the District's attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions, please contact XXXX, one of the attorneys assigned to this complaint, at XXX-XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

Angela Martinez-Gonzalez
Program Manager

Attachment – Resolution Agreement

cc: XXX, Director of Special Education (by email only)
Sydnee Dickson, State Superintendent of Public Instruction (by email only and without attachment)